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*Pro Bono Counsel Referred via the  
 Legal Aid Center of Southern Nevada*  
 for Plaintiff GREGORY MAY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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GREGORY MAY,

Plaintiff,

v.

SCOTT MATTINSON, in his individual  
 and official capacities;  
 THERESA WICKHAM, in her individual  
 and official capacities;  
 MARTIN NAUGHTON, M.D., in his  
 individual and official capacities;  
 BRIAN WILLIAMS, in his individual  
 and official capacities;  
 JENNIFER NASH, in her individual and  
 official capacities;  
 CASEWORKER HAMMELL, in his/her  
 individual and official capacities;  
 MONIQUE HUBBARD-PICKETT, in  
 her individual and official capacities;  
 THOMAS HINCKLE, in his individual  
 capacity;  
 C/OT A. RODRIGUEZ also known as  
 AMANDA ARIAS, in her individual  
 capacity;  
 TIMOTHY HULSEY, in his/her  
 individual capacity;  
 COREY ROWLEY, in his individual  
 capacity;  
 CHRISTOPHER MILLER, in his

Case No.: 2:19-cv-00161-RFB-VCF

**STIPULATION AND ORDER TO  
 SUBSTITUTE DEFENDANT  
 WILLIAM A. GITTERE IN  
 PLACE OF DEFENDANT  
 SCOTT MATTINSON**

1 individual capacity; )  
 STEFFEN MOSKOFF, in his individual )  
 2 capacity; )  
 DAMIEN ROBINS, in his individual )  
 3 capacity, )  
 )  
 4 Defendants. )

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5  
 6 Plaintiff Gregory May, by and through his counsel, Angela H. Dows, Esq.,  
 7 and Defendants Scott Mattinson, Stephen Moskoff, Jennifer Nash, Martin  
 8 Naughton, Corey Rowley, Theresa Wickham, and Brian Williams, by and through  
 9 counsel, Aaron D. Ford, Nevada Attorney General, and Alexander J. Smith, Deputy  
 10 Attorney General, of the State of Nevada, Office of the Attorney General, hereby  
 11 submit their Stipulation and Order to substitute in Defendant William A. Gittere in  
 12 the place and stead of Defendant Scott Mattinson pursuant to Fed. R. Civ. P. 17 and  
 13 Fed. R. Civ. P. 25.  
 14

15 Dated this 8th day of January, 2021.

16  
 17 Respectfully submitted,  
 /s/ Angela H. Dows  
 18 ANGELA H. DOWS, ESQ.  
 1333 N. Buffalo Drive, Suite 210  
 19 Las Vegas, Nevada 89128  
*Pro Bono Counsel Referred via the*  
 20 *Legal Aid Center of Southern Nevada*  
 for Plaintiff GREGORY MAY  
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1       **I.       APPLICABLE LAW**

2       Fed. R. Civ. P. 17(a)(3) provides:

3         
4       (3) *Joinder of the Real Party in Interest.* The court may not dismiss an  
5       action for failure to prosecute in the name of the real party in interest  
6       until, after an objection, a reasonable time has been allowed for the  
7       real party in interest to ratify, join, or be substituted into the action.  
8       After ratification, joinder, or substitution, the action proceeds as if it  
9       had been originally commenced by the real party in interest.

10       Additionally, Fed. R. Civ. P. 25 provides, in relevant part:

11       (a) DEATH.

12       (1) **Substitution if the Claim Is Not Extinguished.** If a party dies and  
13       the claim is not extinguished, the court may order substitution of the  
14       proper party. A motion for substitution may be made by any party or  
15       by the decedent's successor or representative. If the motion is not made  
16       within 90 days after service of a statement noting the death, the action  
17       by or against the decedent must be dismissed.

18       (2) **Continuation Among the Remaining Parties.** After a party's death,  
19       if the right sought to be enforced survives only to or against the  
20       remaining parties, the action does not abate, but proceeds in favor of or  
21       against the remaining parties. The death should be noted on the  
22       record.

23       (3) **Service.** A motion to substitute, together with a notice of hearing,  
24       must be served on the parties as provided in Rule 5 and on nonparties  
25       as provided in Rule 4. A statement noting death must be served in the  
26       same manner. Service may be made in any judicial district.

27       ...

28       (d) **PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE.** An action  
does not abate when a public officer who is a party in an official  
capacity dies, resigns, or otherwise ceases to hold office while the  
action is pending. The officer's successor is automatically substituted  
as a party. Later proceedings should be in the substituted party's  
name, but any misnomer not affecting the parties' substantial rights  
must be disregarded. The court may order substitution at any time,  
but the absence of such an order does not affect the substitution.

1       **II.     STIPULATION**

2           The parties submit that Defendant William A. Gittere be substituted in the  
3 place and stead of Defendant Scott Mattinson in the subject action. This is based  
4 upon the following:

- 5           a.     On October 14, 2020, Plaintiff received notice from Defendants'  
6                 counsel via electronic correspondence that Defendant Scott Mattinson  
7                 had passed away in 2020.
- 8           b.     Pursuant to Fed. R. Civ. P. 25, the instant stipulation is being  
9                 commenced within ninety (90) days of said informal notice of death.
- 10          c.     That Plaintiff also desires to have the warden of the Ely State Prison  
11                 included as a Defendant in the matter as a real party in interest, to  
12                 wit a person named William A. Gittere.
- 13          d.     That the parties have agreed in exchange for a dismissal of claims  
14                 that Plaintiff may have against the deceased Defendant Scott  
15                 Mattinson, including any claims that the Plaintiff may have against  
16                 the estate of Scott Mattinson, if any, that:
- 17                 1. Defendant Scott Mattinson would be dismissed from the case, and  
18                 2. Defendant William A. Gittere would be added to the case.
- 19          e.     Plaintiff Gregory May has been advised of the stipulation, and assents  
20                 to the same.
- 21          f.     Thus, the parties agree that:
- 22                 1. The operative complaint in this action shall be deemed amended to  
23                 exclude Defendant Scott Mattinson, and add Defendant William A.  
24                 2. Defendant William A. Gittere would be added to the case.
- 25                 3. Plaintiff Gregory May has been advised of the stipulation, and assents  
26                 to the same.
- 27                 4. Thus, the parties agree that:
- 28                 1. The operative complaint in this action shall be deemed amended to  
                    exclude Defendant Scott Mattinson, and add Defendant William A.

Gittere.

2. The operative Answer in this action shall be deemed to be the answer on behalf of said added Defendant William A. Gittere, in addition to the Defendants represented in the Answer (*See* ECF No. 59.)
3. The caption in this matter shall be changed to remove Defendant Scott Mattinson as the first party Defendant and substitute William A. Gittere as the first party Defendant, such that it reads “Gregory May v. William A. Gittere, et al., Defendants.”
4. No other changes to the other named Defendants are contemplated via the instant stipulation.

DATED: January 8, 2021

DATED: January 8, 2021

/s/ Angela H. Dows  
ANGELA H. DOWS, ESQ.  
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*Attorney for Plaintiff*

/s/ Alexander J. Smith  
ALEXANDER J. SMITH, ESQ.  
Deputy Attorney General  
Office of the Nevada Attorney General  
555 E. Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
*Attorneys for Defendants*

**IT IS SO ORDERED.**

DATED this 11<sup>th</sup> day of January, 2021.



UNITED STATES MAGISTRATE JUDGE